

Interim Workplace Harassment Policy of the General Assembly

Prepared by the Office of Legislative Legal Services, effective 11/8/18

A. WORKPLACE HARASSMENT POLICY STATEMENT

1. Pursuant to the workplace harassment policy set forth in Joint Rule 38, it is the policy of the General Assembly to create and maintain a work environment in which all members of the General Assembly, legislative employees, and third parties are treated with dignity and respect. Members, legislative employees, and third parties have the right to a workplace that is free from harassment, both subtle and overt. Therefore, the General Assembly will strive to eliminate harassing behavior based on disability, race, creed, color, sex, sexual orientation, religion, age forty and older, national origin, military status, genetic information, or ancestry that members, legislative employees, and third parties may encounter in the course of their work.

B. APPLICABILITY

1. This Policy is applicable to all legislative employees who are not subject to the state personnel system, each member of the General Assembly, and third parties.

C. DEFINITIONS

1. As used in this Policy:
 - a. "Contact person" means:
 - I. The director of Legislative Council, or the director's designee of the opposite gender, for legislative employees of that office;
 - II. The director of the Office of Legislative Legal Services, or the director's designee of the opposite gender, for legislative employees of that office;
 - III. The staff director of the Joint Budget Committee, or the staff director's designee of the opposite gender, for legislative employees of that office;
 - IV. The State Auditor, or the State Auditor's designee of the opposite gender, for legislative employees of that office who are not in the state personnel system;
 - V. The secretary of the Senate, or the secretary's designee of the opposite gender, for legislative employees of the Senate;

- VI. The chief clerk of the House of Representatives, or the chief clerk's designee of the opposite gender, for legislative employees of the House of Representatives;
 - VII. Either the President of the Senate, or the President's designee of the opposite gender, or the Speaker of the House of Representatives, or the Speaker's designee of the opposite gender, for members, third parties, and any other persons with a complaint; or
 - VIII. In addition to a designee described in subsections 1.a.I. to 1.a.VII. of this section C., a person of the same gender designated at the discretion of a legislative service agency director, the State Auditor, the secretary of the Senate, or the chief clerk of the House of Representatives for legislative employees of their respective offices or chamber, or at the discretion of the President of the Senate or the Speaker of the House of Representatives for members, third parties, and any other persons with a complaint.
- b. "Legislative human resources administrator" or "administrator" means the legislative human resources administrator in the Office of Legislative Legal Services.
 - c. "Legislative employee" means an employee of the Legislative Council, the Office of Legislative Legal Services, the Joint Budget Committee, the State Auditor, the Senate, or the House of Representatives, including any legislative aide to a member. For purposes of this Policy, "legislative employee" also includes a legislative intern and volunteer staff.
 - d. "Third party" means a newsperson, lobbyist, and member of the general public who has business at the state capitol or who is doing business with one or more of the legislative service agencies, the Senate, or the House of Representatives.
 - e. "Workplace harassment" means any harassment based on disability, race, creed, color, sex, sexual orientation, religion, age forty and older, national origin, military status, genetic information, or ancestry, including verbal or physical behavior or conduct, that denigrates or shows hostility or aversion toward an individual because of that individual's disability, race, creed, color, sex, sexual orientation, religion, age forty and older, national origin, military status, genetic information, or ancestry or that has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment. While "workplace harassment" includes sexual harassment, sexual harassment raises issues that are to some extent unique in comparison to other types of workplace harassment. Therefore, sexual harassment warrants separate emphasis and is further described in sections D. and

E. of this Policy.

D. SEXUAL HARASSMENT

1. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:
 - a. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
 - b. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
 - c. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

E. EXAMPLES OF SEXUAL HARASSMENT

1. The following are examples of conduct or communication which may constitute sexual harassment:
 - a. **VERBAL:**
 - I. Sexual comments or innuendos about one's clothing, body, or sexual activity;
 - II. Discussing sexual topics in the workplace, such as sexual practices or preferences or telling sexual jokes or stories;
 - III. Requesting or demanding sexual favors or suggesting that there is any connection between sexual behavior and any term or condition of employment, whether that connection be positive or negative; OR
 - IV. Using sexual words or phrases.
 - b. **NONVERBAL:**
 - I. Displaying sexually explicit pictures or objects in the work area;
 - II. Giving personal gifts of a sexual nature;
 - III. Making A sexually suggestive gesture;
 - IV. Making unwelcome visits to a member's, legislative employee's, or

third party's home or hotel room; OR

- V. Displaying cartoons or sending emails, text messages, instant messages, or notes any of which contain sexual pictures, words, or phrases.

c. **PHYSICAL:**

- I. Kissing of a member, legislative employee, or third party, unless the kissing is a customary demonstration of affection, is clearly not objected to, and is made in connection with a greeting or parting, such as a "peck" on the cheek;
- II. Patting, pinching, or intentionally brushing against a member's, legislative employee's, or third party's body; OR
- III. Sexual contact, intercourse, or assault.

- 2. The examples in subsection 1. of this section E. are illustrative of the communications and conduct that may constitute sexual harassment if unwelcome and depending upon the totality of the circumstances. In that regard, the following must be kept in mind:
 - a. A single incident may or may not constitute sexual harassment;
 - b. Whether a particular action is sexual harassment will depend on the facts, and determinations will be made on a case-by-case basis;
 - c. Conduct or communications that might be welcome to one person may be unwelcome to another person. Conduct or communications that might have been welcome between two individuals at one time may become unwelcome at a later time.
 - d. Other conduct or a communication not expressly described in the examples, but which is substantially similar to the examples, may violate this Policy.

F. CONSULTATION WITH LEGISLATIVE HUMAN RESOURCES ADMINISTRATOR

- 1. A member, legislative employee, or third party who has concerns about potential harassment under this Policy may consult with the legislative human resources administrator. The administrator may offer advice concerning whether and how to file a formal complaint under this Policy and may offer the person accommodations whether or not the person files a formal complaint. All information concerning the consultation with the administrator must remain confidential, unless the administrator determines the actions alleged constitute an immediate threat to the safety of the workplace.

G. COMPLAINTS REGARDING WORKPLACE HARASSMENT

1. A member, legislative employee, or third party who believes he or she is the subject of any type of workplace harassment, sexual harassment, or retaliation in any manner from anyone, should submit a complaint directly to the appropriate contact person defined in section C.1.a. of this Policy.
2. The complainant may submit the complaint to either gender contact person. The complaint should specifically describe the incident or incidents. The contact person who receives the complaint shall investigate the complaint as promptly and confidentially as practicable by interviewing the complainant, the person accused, and any witnesses or coworkers and by considering the circumstances surrounding the alleged incident or incidents that form the basis of the complaint. The contact person may also contract with a qualified third party to conduct the investigation in accordance with subsection 8. of this section G.

The contact person shall promptly notify the legislative human resources administrator of a complaint. The administrator is available to provide consultation and recommendations concerning the conduct of the investigation.

3. The contact person may gather the following facts in an investigation from the complainant, the respondent, or any witnesses or coworkers:
 - a. **FROM THE COMPLAINANT:**
 - I. A description of the incident or incidents, including where and when the incident or incidents took place;
 - II. Whether a similar incident or incidents has or have happened before;
 - III. An explanation of how the incident or incidents affected the complainant's work;
 - IV. A description of the complainant's reaction to the incident or incidents; and
 - V. Whether there were any witnesses to the facts surrounding the incident or incidents or any other evidence of its occurrence.
 - b. **FROM THE RESPONDENT:**
 - I. An explanation of the facts surrounding the complainant's allegations and a request for a response;

- II. Any reason why the complainant might be fabricating the complaint; and
- III. Whether there were any witnesses to the incident or incidents or any other evidence surrounding the complaint.

c. **FROM WITNESSES OR COWORKERS:**

- I. What they observed;
 - II. How they reacted to the facts surrounding the incident; AND
 - III. What the complainant or the respondent told them about the alleged incident.
- 4. Nothing in subsection 3.b. of this section G., or any other provision of this Policy, requires any respondent to involuntarily provide, either orally or in writing, any facts, information, or evidence in response to an investigation of a complaint or to involuntarily sign a written statement or confession.
 - 5. A contact person may pursue interim steps to accommodate a complainant or respondent while the investigation is pending. Depending on the case and the party's wishes, these steps may include changes to working situations if such accommodations are reasonably available. The administrator is available to provide consultation and recommendations on accommodations.
 - 6. In making factual determinations, the contact person or investigator shall use the preponderance of the evidence standard. In determining whether the evidence established a violation of this Policy, the contact person must find both that the complainant subjectively found the actions to be offensive and that a reasonable person in the complainant's position would have found the actions to be offensive.
 - 7. Following the investigation and, after any appropriate consultation, the contact person shall resolve the complaint pursuant to section J. of this Policy. Resolution may include disciplinary action, when appropriate. The contact person shall inform both the complainant and the respondent of the outcome of the investigation.
 - 8. Under some circumstances, an outside individual or entity may be used to investigate the complaint and to make recommendations. In such circumstances, the contact person may provide information related to the complaint to the outside individual or entity conducting the investigation.

H. RETALIATION PROHIBITED

1. Retaliation is an act of punishment, reprisal, or revenge that is taken against a person because that person complained of behavior, assisted in a complaint under this Policy, or participated in an investigation under this Policy. Retaliation can take many forms in a legislative workplace, as described in this section H., but essentially retaliation can be any action that is taken against a person that would deter a reasonable person from coming forward to complain of misbehavior under this Policy.
2. Retaliation is a serious problem, and a fear of retaliation prevents issues from surfacing, prevents people from raising problems, and enables a culture of harassment to fester. The General Assembly recognizes the seriousness of retaliation and is committed to responding to and addressing retaliation concerns proactively and reactively upon receipt of a complaint of retaliation.
3. The General Assembly prohibits retaliation against any person for having complained about violations of this Policy, assisting in a complaint, or participating in an investigation into such a complaint.
4. Members, legislative employees, and third parties are encouraged to report violations of this section H. by following the formal complaint process described in section G. of this Policy.

I. RECORDKEEPING

1. Complaints of workplace harassment, sexual harassment, or retaliation will be investigated and handled and information shared with those having a need to know and in accordance with the law as follows:
 - a. When a workplace harassment, sexual harassment, or retaliation complaint is made, the contact person shall create a separate file under the complainant's name. The contact person shall place all written documentation arising from the complaint in the file including, but not limited to the following: The complaint, if it is in writing; the contact person's or other investigator's investigatory notes, information, and other writings; witness statements; and the disposition, if any, of the complaint. At the conclusion of the process, the contact person shall provide the complete file to the legislative human resources administrator. Except as otherwise specifically stated in this Policy, the administrator shall keep the records in the file confidential.
 - b. Section 24-72-204 (3)(a)(X.5), C.R.S., applies to records maintained of sexual harassment complaints under this Policy. Specifically, it provides that:
 - I. Any records of sexual harassment complaints and investigations maintained pursuant to Joint Rule 38 are not subject to public inspection;

- II. Disclosure of the records of the complaint and the investigation to a "person in interest", which includes the complainant and the respondent, is permissible; and
- III. A respondent in a sexual harassment complaint may make records kept pursuant to this Policy available for public inspection in order to support the contention that an allegation of sexual harassment against that person is false.

J. RESOLUTION OF COMPLAINTS

- 1. If the contact person determines that this Policy has been violated, appropriate remedial action will follow. As a general rule, remedies will be assessed proportionate to the seriousness of the violation. For legislative employees, this may include an apology, direction to stop the offensive conduct, counseling or training, oral warning, written warning, or termination. If the contact person determines that a member of the General Assembly has violated this Policy, the contact person shall inform leadership of the respective body which shall, in turn, handle the remedial action, if any, according to the rules of the appropriate house of the General Assembly.
- 2. The appropriate contact person shall handle the resolution of complaints involving legislative employees. If a member is involved in a complaint situation, the contact person may discuss resolution directly with the member or take the matter to leadership of the respective body, depending on the circumstances; however, only leadership of the appropriate house may handle any disciplinary action involving a member. If a third party is involved, the contact person shall handle the resolution thereof.
- 3. The legislative human resources administrator is available to provide consultation and recommendations to all contact persons and leadership of the applicable houses regarding determinations of Policy violations and appropriate remedial actions.
- 4. If the workplace harassment, sexual harassment, or retaliation recurs after a complaint is made, the complainant shall immediately bring the matter to the attention of the appropriate contact person.

K. PARTIES' RIGHTS AND RESPONSIBILITIES DURING AN INVESTIGATION

- 1. For investigations of complaints filed under section G. of this Policy, both the complainant and respondent have certain rights and responsibilities.
 - a. The complainant and respondent have the responsibility to:

- I. Participate fully and in good faith in the investigation process, unless the complainant chooses not to participate;
- II. Tell the truth in investigative interviews and proceedings;
- III. Refrain from influencing, coercing, or otherwise tampering with witnesses or evidence;
- IV. Keep the investigation process, parties, and issues confidential during the investigation;
- V. Provide all information relevant to the matter within their possession and not withhold relevant information; and
- VI. Meet deadlines as requested by the contact person or investigator during the formal resolution process. Contact persons and investigators may only grant extensions of time for good cause shown, and the parties shall be provided written notice of extensions as applicable.

b. The complainant and respondent have the right to:

- I. Be treated with dignity and respect throughout the process;
- II. A meaningful opportunity to produce any evidence in their possession to defend themselves from allegations or counter-allegations by being afforded:
 - i. A full description of the allegations against them;
 - ii. The opportunity to provide a written statement, the identity of relevant witnesses, additional evidence, and questions for the investigators to ask the other party, during and for a reasonable time following their initial witness interview (contingent on investigation deadlines); and
 - iii. The opportunity for a follow-up interview if new evidence is discovered or, if evidence inconsistent with their version of material events is discovered, and the opportunity to explain or otherwise respond to evidence not available at the time of their initial witness interview. This right is subject to the investigation timeline.
- III. Bring an advisor to any meeting or interview and:

- i. The advisor may be an attorney or any support person;
- ii. The advisor may not speak on behalf of the complainant or respondent during any proceeding of the formal resolution process; and
- iii. It is the complainant or respondent's obligation to select an advisor whose schedule allows attendance within the timeframes designated in section L. of this Policy.

L. TIMELINES FOR THE RESOLUTION PROCESS

1. Violations of this Policy and the complaint resolution process described in this Policy may be difficult and stressful for the people involved and disruptive for the General Assembly's workplace and legislative business operations. For these reasons, it is critical that complaint resolution be completed as quickly as possible while maintaining a full and fair investigative process. With that guiding principle in mind, the following timelines have been established for the prompt resolution of complaints under this Policy.
2. The resolution process must be completed within ninety days after a contact person is notified of the complaint, as follows:
 - a. If the contact person elects to contract with a third-party investigator, that investigator must be assigned within fourteen days after the contact person is notified of the complaint;
 - b. The third-party investigator or contact person shall complete the investigation, make factual findings, and prepare and deliver an investigation report, if applicable, within forty-five days after the third-party investigator is retained or within forty-five days after the contact person is notified of the complaint if a third-party investigator is not retained;
 - c. The contact person shall determine whether the respondent violated this Policy, document the determination, and transmit the determination and recommendations to the appropriate decision-maker within fourteen days after receipt of the investigation report from the third-party investigator or within fourteen days after completing the investigation and report if a third-party investigator is not retained;
 - d. In a matter involving a respondent who is not a member of the General Assembly, the contact person shall determine what remedial action is appropriate, if any, within fourteen days of the determination of a violation; and

- e. In a matter involving a respondent who is a member of the General Assembly, leadership of the appropriate house shall determine what remedial action is appropriate, if any, as soon as practicable pursuant to the rules of the appropriate legislative body.
3. There may be situations when the timeline of the process must be extended to ensure a thorough, fair, and impartial process. The contact person shall notify both parties, in writing, of any reasons for deviating from the timeline set forth in this section L. and shall document the reasons in the complaint file.

M. FALSE COMPLAINTS

1. Complaints of workplace harassment submitted pursuant to this policy that are found to be intentionally or recklessly dishonest or malicious will not be tolerated.